



International Swap Dealers Association, Inc.

# MASTER AGREEMENT

dated as of .....

..... and .....

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows: —

## 1. Interpretation

- (a) **Definitions.** The terms defined in Section 12 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

## 2. Obligations

- (a) **General Conditions.**
  - (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
  - (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
  - (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable: —

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of branches or offices through which the parties make and receive payments or deliveries.

(d) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

### 3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into) that:—

(a) **Basic Representations**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:---

(a) **Furnish Specified Information.** It will deliver to the other party any forms, documents or certificates specified in the Schedule or any Confirmation by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

#### 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) or to give notice of a Termination Event) to be complied with or performed

by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its

winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer: —

- (1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or
- (2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (ii) below or an Additional Termination Event if the event is specified pursuant to (iii) below:—

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

- (1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or
- (2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(iii) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

## 6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the “Defaulting Party”) has occurred and is then continuing, the other party (the “Non-defaulting Party”) may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, “Automatic Early Termination” is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iii) **Right to Terminate.** If: —

(1) an agreement under Section 6(b)(ii) has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality other than that referred to in Section 6(b)(i), a Credit Event Upon Merger or an Additional Termination Event occurs,

either party in the case of an Illegality, any Affected Party in the case of an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) **Effect of Designation.**

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(d) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(c).

(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment), from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default:—

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party over (B) the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) **Second Method and Market Quotation.** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party less (B) the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) **Second Method and Loss.** If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative

number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) **One Affected Party.** If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(c)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) **Two Affected Parties.** If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Unpaid Amounts owing to X less (II) the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(c) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that if Market Quotation applies an amount recoverable under this Section 6(c) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## 7. Transfer

Neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void

## 8. Miscellaneous

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- (b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- (c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.
- (d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- (e) **Counterparts and Confirmations.**
- (i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
  - (ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.
- (f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- (g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

## 9. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 10. Notices

- (a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—
- (i) if in writing and delivered in person or by courier, on the date it is delivered;
  - (ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

## 11. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably: —

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

## 12. Definitions

As used in this Agreement:—

"**Additional Termination Event**" has the meaning specified in Section 5(b).

"**Affected Party**" has the meaning specified in Section 5(b).

**"Affected Transactions"** means (a) with respect to any Termination Event consisting of an Illegality, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

**"Affiliate"** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

**"Applicable Rate"** means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

**"consent"** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**"Credit Event Upon Merger"** has the meaning specified in Section 5(b).

**"Credit Support Document"** means any agreement or instrument that is specified as such in this Agreement.

**"Credit Support Provider"** has the meaning specified in the Schedule.

**"Default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**"Defaulting Party"** has the meaning specified in Section 6(a).

**"Early Termination Date"** means the date determined in accordance with Section 6(a) or 6(b)(iii).

**"Event of Default"** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**"Illegality"** has the meaning specified in Section 5(b).

**"law"** includes any treaty, law, rule or regulation and **"lawful"** and **"unlawful"** will be construed accordingly.

**"Local Business Day"** means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

**"Loss"** means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position ( or any gain

resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(c)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 9. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

**"Market Quotation"** means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

**"Non-default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

**"Non-defaulting Party"** has the meaning specified in Section 6(a).

**"Potential Event of Default"** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**"Reference Market-makers"** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

**"Scheduled Payment Date"** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**"Set-off"** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under

this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

**"Settlement Amount"** means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**"Specified Entity"** has the meaning specified in the Schedule.

**"Specified Indebtedness"** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**"Specified Transaction"** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**"Terminated Transactions"** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

**"Termination Event"** means an Illegality or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**"Termination Rate"** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**"Unpaid Amounts"** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined

by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

.....  
(Name of Party)

.....  
(Name of Party)

By: .....  
Name:  
Title:  
Date:

By: .....  
Name:  
Title:  
Date:

**SCHEDULE  
TO THE  
MASTER AGREEMENT**  
dated as of \_\_\_\_\_, 2004

between  
**MORGAN STANLEY CAPITAL SERVICES INC.**  
("Party A")  
and  
**CITY OF AUSTIN, TEXAS**  
("Party B")

**Part 1. Termination Provisions**

- (a) **"Specified Entity"** means in relation to Party A for the purpose of:-

Section 5(a)(v), Affiliates  
Section 5(a)(vi), None Specified  
Section 5(a)(vii), None Specified  
Section 5(b)(ii), None Specified

and in relation to Party B for the purpose of:-

Section 5(a)(v), None Specified  
Section 5(a)(vi), None Specified  
Section 5(a)(vii), None Specified  
Section 5(b)(ii), None Specified

- (b) **"Specified Transaction"** means, in lieu of the meaning specified in Section 12, any rate swap transaction, including an agreement with respect thereto (whether or not documented under or effected pursuant to a master agreement) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party).
- (c) **"Cross Default"** applies to Party A and Party B. Section 5(a)(vi) will apply to Party A and will apply to Party B, provided that, with respect to any Specified Indebtedness that is not capable of being declared due and payable as a result of the occurrence or existence of a default, event of default or other similar condition or event (however described) under the agreement or instrument relating to such Specified Indebtedness, the words "which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable" shall be deleted from clause (1) of such Section 5(a)(vi) and the words "and the bondholders or trustee are permitted to exercise any remedies under the agreements and instruments" shall be added in its place.
- (d) **"Specified Indebtedness"** has the meaning specified in Section 12; provided that with respect to Party B, Specified Indebtedness shall be limited to any such obligation secured by a pledge of the Net Revenues.
- (e) **"Threshold Amount"** means: (i) with respect to Party A, U.S. \$100,000,000; and (ii) with respect to Party B, in connection with any Specified Indebtedness, U.S. \$1,000,000.

- (f) **Bankruptcy.** Clause (6) of Section 5(a)(vii) of this Agreement is hereby amended to read in its entirety as follows:--

“(6)(A) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (or, in the case of a Government Entity, for the Project/Program) or (B) there shall be declared or introduced or proposed for consideration by it or by any legislative or regulatory body with competent jurisdiction over it, the existence of a state of financial emergency or similar state of financial distress in respect of it;”.

- (g) **Merger Without Assumption.** Section 5(a)(viii) of this Agreement is hereby amended to read in its entirety as follows:--

“(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or, in the case of Party B, all or substantially all of the Project/Program) to, another entity (or, without limiting the foregoing, if such party or any Credit Support Provider of such party is a Government Entity, an entity such as an organization, board, commission, authority, agency or body succeeds to the principal functions of, or powers and duties granted to, such party or Credit Support Provider, generally or with respect to the Project/Program) and, at the time of such consolidation, amalgamation, merger, transfer, or succession:--

(1) the resulting, surviving, transferee or successor entity fails to assume all the obligations of such party, such Credit Support Provider or such Specified Entity under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement;

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement; or

(3) In the case of a Government Entity, the sources of payment for the obligations of such Government Entity as set forth in the Schedule are no longer available for the satisfaction of such resulting, surviving, transferee or successor entity’s obligations to the other party hereto.”

- (h) **“Credit Event Upon Merger”** applies to Party A and Party B. Section 5(b)(ii) is hereby deleted in its entirety and replaced by the following:

“(ii) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or, in the case of a Government Entity, all or substantially all of the Project/Program) to, or reorganizes, incorporates, reincorporates, or reconstitutes into or as, another entity, or another entity transfers all or substantially all its assets (or, in the case of a Government Entity, all or substantially all of the Project/Program) to, or reorganizes, incorporates, reincorporates, or reconstitutes into or as, X (or, without limiting the foregoing, if X is a Government Entity, an entity such as an organization, board, commission, authority, agency or body succeeds to the principal functions of, or powers and duties granted to, X (generally or with respect to the Project/Program), and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of X or the resulting, surviving, transferee, or successor

entity (which will be the Affected Party) is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action; or”

- (i) The “**Automatic Early Termination**” provisions of Section 6(a) will not apply to Party A and will not apply to Party B.
- (j) **Payments on Early Termination.** “**Market Quotation**” and “**Second Method**” will apply for the purpose of Section 6(e) of this Agreement.
- (k) **Additional Termination Event** will apply. The following shall constitute an Additional Termination Event with respect to Party A and Party B:
  - (i) with respect to Party A, if Party A’s Credit Support Provider’s senior, unsecured, unenhanced debt rating is withdrawn, suspended or reduced below “BBB-” in the case of S&P or below “Baa3” in the case of Moody’s.
  - (ii) with respect to Party B, if prior to August 17, 2005, the unenhanced rating on the Prior Lien Bonds is withdrawn, suspended or reduced below “BBB-” in the case of S&P or below “Baa3” in the case of Moody’s.
  - (iii) with respect to Party B, if by August 17, 2005, Party B has not (1) delivered to Party A a swap insurance policy or financial guarantee insurance policy insuring payment of Party B’s periodic ongoing payments hereunder in form and substance satisfactory to Party A and from an insurer that is acceptable to Party A and which meets Party A’s then current credit and legal policies and standard criteria for swap insurers for similar transactions and (2) entered into an ISDA Credit Support Annex (the “Credit Support Annex”) with Party A in substantially the form attached hereto as Exhibit C and simultaneously delivered to Party A: (x) an opinion of counsel (which counsel shall be reasonably acceptable to Party A) that the Credit Support Annex is a legal, valid, binding and enforceable obligation of Party B, does not conflict with the terms of the Covered Agreement or any other agreement of Party B in effect at such time and Party A has a perfected first priority security interest in any pledged collateral under the Credit Support Annex; and (y) delivered any collateral required to be delivered under the Credit Support Annex.

For the purpose of Termination Event (i) above, the Affected Party shall be Party A and for the purpose of Termination Events (ii) and (iii) above, the Affected Party shall be Party B. For the purpose of all Termination Events above, all Transactions shall be Affected Transactions.

**Part 2. Agreement to Deliver Documents**

For the purpose of Section 4, each party agrees to deliver the following documents, as applicable:

<u>Party required to deliver document</u>	<u>Form/Document/Certificate</u>	<u>Date by which to be delivered</u>	<u>Covered by Sec. 3(d) Representation</u>
Party A and Party B	Either (1) a signature booklet containing secretary’s certificate and resolutions (“authorizing resolutions”) authorizing the party	The earlier of the fifth Business Day after the Trade Date of the first Transaction or upon	Yes

<b>Party required to deliver document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Sec. 3(d) Representation</b>
	to enter into derivatives transactions of the type contemplated by the parties or (2) a secretary's certificate, authorizing resolutions and incumbency certificate, in either case, for such party and any Credit Support Provider of such party reasonably satisfactory in form and substance to the other party.	execution of this Agreement and as deemed necessary for any further documentation.	
Party A	A written opinion of legal counsel to Party A and its Credit Support Provider in the forms attached hereto as Exhibits A-1, A-2 and A-3	Upon execution of this Agreement and upon the execution of each Confirmation	No
Party B	A written opinion of legal counsel to Party B reasonably satisfactory in form and substance to Party A	Upon execution of this Agreement and upon the execution of each Confirmation	No
Party A and Party B	A duly executed copy of the Credit Support Documents specified in Part 3 of this Schedule	Upon the execution of this Agreement	No
Party A and Party B	A copy of the annual audited financial statements or the annual report of such party (in the case of Party A, in respect of Morgan Stanley) containing audited consolidated financial statements for each such fiscal year, each certified by independent certified public accountants and prepared in accordance with generally accepted accounting principles in the country in which such party is organized.	As soon as practicable after the execution of this Agreement and also within 210 days (or as soon as practicable after becoming publicly available) after the end of each of its fiscal years while there are any obligations outstanding under this Agreement.	Yes
Party B	Copies or, where available, certified copies of: (1) the charter and enabling statutes (or comparable legislation) creating Party B and any Credit Support Provider of Party B and	Upon execution of this Agreement and as deemed necessary for further documentation	Yes

<u>Party required to deliver document</u>	<u>Form/Document/Certificate</u>	<u>Date by which to be delivered</u>	<u>Covered by Sec. 3(d) Representation</u>
	authorizing Party B and any Credit Support Provider of Party B to enter into this Agreement and any Credit Support Document, the exhibits, supplements, and attachments hereto, the documents incorporated by reference herein, and the Confirmations hereunder; (2) any constituent instruments of Party B and any Credit Support Provider of Party B, rules, regulations, investment policies, guidelines, resolutions, ordinances, or provisions affecting the authority of Party B or such Credit Support Provider of Party B to enter into this Agreement, any Credit Support Document, the exhibits, supplements, and attachments hereto, the documents incorporated by reference herein, and the Confirmations hereunder, and the performance of its obligations hereunder and thereunder; and (3) amendments to any of the foregoing.		
Party B	All documents evidencing the necessary authorizations, determinations and approvals for the offering, sale and issuance of the Related Bonds	On the Effective Date of any Transaction hereunder	Yes
Party B	Reliance letters on opinions of bond counsel and other counsel delivered in connection with the issuance of the Related Bonds	On the Effective Date of any Transaction hereunder	No
Party B	A written opinion of counsel acceptable to Party A as to perfection of Party A's security interest in the pledged revenues set forth in Part 4(e) of this Schedule; which opinion shall be in form and substance satisfactory to Party A	Upon execution of this Agreement and upon the creation of any additional security interest required hereunder	Yes

<u>Party required to deliver document</u>	<u>Form/Document/Certificate</u>	<u>Date by which to be delivered</u>	<u>Covered by Sec. 3(d) Representation</u>
Party A and Party B	Such other documents as the other party may reasonably request	Upon request	No

### Part 3. Miscellaneous

(a) **Addresses for Notices.** For the purpose of Section 10(a):-

(i) Address for notices or communications to Party A:-

MORGAN STANLEY CAPITAL SERVICES INC.  
Transaction Management Group  
1585 Broadway  
New York, New York 10036-8293  
Attention: CHIEF LEGAL OFFICER  
Fax No: 001 212 507 4622

(ii) Address for notices or communications to Party B:-

CITY OF AUSTIN, TEXAS  
P.O. BOX 2106  
AUSTIN, TEXAS 78768  
Attention: CITY TREASURER  
Facsimile No.: 512 370-3838  
Telephone No.: 512 974-7883  
Electronic Messaging System Details : dennis.waley@ci.austin.tx.us

(b) **Notices.** Section 10(a) is amended by adding in the third line thereof after the phrase "messaging system" and before the ")" the words, "; provided, however, any such notice or other communication may be given by facsimile transmission if telex is unavailable, no telex number is supplied to the party providing notice, or if answer back confirmation is not received from the party to whom the telex is sent."

(c) **Calculation Agent** means Party A.

(d) **Credit Support Document** means any credit support annex, any Confirmation and any other document any of which by its terms secures, guarantees or otherwise supports either or both parties' obligations under this Agreement (the provisions of which are incorporated by reference herein), including, but not limited to, the guarantee of Morgan Stanley and the Covered Agreement.

(e) **Credit Support Provider** means in relation to Party A: Morgan Stanley.

**Credit Support Provider** means in relation to Party B: Not Applicable.

(f) **Governing Law; Jurisdiction.** This Agreement, each Credit Support Document and each Confirmation will be governed by and construed in accordance with the laws of the State of

Texas. Section 11(b) is amended by: (1) replacing the words in clause (i) with the words “submits to the exclusive jurisdiction of the United States District Court for the Western District of Texas, Austin Division”, and (2) deleting the final paragraph.

- (g) **Waiver of Jury Trial.** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY THE TEXAS CONSTITUTION AND APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT.
- (h) **Netting of Payments.** Clause (ii) of Section 2(c) will apply to any amounts payable with respect to Transactions from the date of this Agreement.
- (i) “**Affiliate**” will have the meaning specified in Section 12, but excludes Morgan Stanley Derivative Products Inc.
- (j) **Form of Agreement.** The parties hereby agree that the text of the body of the Agreement is intended to be the printed form of 1992 ISDA Master Agreement (Local Currency-Single Jurisdiction) as published and copyrighted by the International Swaps and Derivatives Association, Inc.

#### **Part 4. Other Provisions**

- (a) **Deferral of Payments and Deliveries in Connection with Illegality and Incipient Illegality; Interest on Deferred Payments.** Section 2(a)(iii) is hereby amended to read in its entirety as follows:
  - (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default, Illegality, Potential Event of Default or Incipient Illegality with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.
- (b) **Representations.**
  - (i) The introductory clause of Section 3 of this Agreement is hereby amended to read in its entirety as follows:

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(a), at all times until the termination of this Agreement) that:-
  - (ii) Section 3(a)(ii) of this Agreement is hereby amended to read in its entirety as follows:

**Powers.** It has the power (in the case of a Government Entity, pursuant to the Authorizing Law) to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party, and has taken all necessary action and made all

necessary determinations and findings to authorize such execution, delivery and performance;”.

(iii) Section 3(b) of this Agreement is hereby amended to read in its entirety as follows: “(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Incipient Illegality (in the case of a Government Entity) or Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.”

(iv) For purposes of Section 3, the following shall be added, immediately following paragraph (d) thereof:

(e) **Eligible Contract Participant.**

Party A is an “eligible contract participant” as defined in Section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a), as amended by the Commodity Futures Modernization Act of 2000.

Party B (i) is a political subdivision of the State of Texas, (ii) is acting for its own account hereunder and (iii) owns and invests on a discretionary basis \$25,000,000 or more in investments.

(f) This Agreement has been subject to individual negotiation by such party.

(g) It has entered into this Agreement (including each Transaction evidenced hereby) in conjunction with its line of business (including financial intermediation services) or the financing of its business, or, in the case of a Governmental Entity, in furtherance of its governmental purposes.

(h) It is entering into this Agreement, any Credit Support Document to which it is a party, each Transaction and any other documentation relating to this Agreement or any Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise).

(i) Each party acknowledges that, pursuant to the terms of this Agreement (including, without limitation, Section 6(e) hereof), it may owe a payment to the other party upon the designation of an Early Termination Date hereunder, even in the event such Early Termination Date is the result of an Event of Default with respect to such other party.

(j) **ERISA Representation.** It continuously represents that it is not (i) an employee benefit plan (hereinafter an “ERISA Plan”), as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), subject to Title I of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended, (ii) a person acting on behalf of an ERISA Plan or (iii) a person the assets of whom constitute assets of an ERISA Plan. It will provide notice to the other party in the event that it is aware that it is in breach of any aspect of this representation or is aware that with the passing of time, giving of notice or expiry of any applicable grace period it will breach this representation.

- (c) **Additional Representations of Party B.** Party B hereby further represents to Party A (which representations will be deemed to be repeated by Party B at all times until the termination of this Agreement) that:
- (i) This Agreement has been, and each Transaction hereunder will be (and, if applicable, has been), entered into for the purposes of managing its borrowings or investments and not for purposes of speculation.
  - (ii) Party B has taken or will take all steps necessary or advisable and has the authority to create and perfect the pledge and security interest required to be created pursuant to Part 4(e) of this Schedule, and such pledge and security interest have been validly created and perfected.
  - (iii) Any Transaction entered into pursuant to this Agreement together with any transactions that Party B has or may enter into with Party A and/or with any or all other parties does not and will not violate or exceed any limits or restrictions contained in any authorizations, approvals or resolutions of the governing body of Party B.
  - (iv) The execution and delivery by Party B of this Agreement, each Confirmation and any other documentation relating hereto, and the performance of Party B of its obligations hereunder and thereunder, are in furtherance, and not in violation, of the municipal purposes for which Party B is organized pursuant to the laws of the State of Texas.
  - (v) This Agreement and each Transaction hereunder do not constitute any kind of investment by Party B that is proscribed by any constitution, charter, law, rule, regulation, government code, constituent or governing instrument, resolution, guideline, ordinance, order, writ, judgment, decree, charge, or ruling to which Party B (or any of its officials in their respective capacities as such) or its property is subject. The obligations of Party B to make payments to Party A under this Agreement and each Transaction are not subject to appropriation or similar action.
  - (vi) No Affiliate or other person, firm, corporation, entity, or association may liquidate, borrow, encumber or otherwise utilize the assets of Party B.
  - (vii) Party B is a home-rule municipality organized and existing under the laws of the State of Texas.
  - (viii) This Agreement is a "credit agreement" (as defined in the Authorizing Law) and Party B is entering into this Agreement in connection with or related to the authorization, issuance, security, purchase, payment, sale, resale, redemption, remarketing, or exchange of an "obligation" (as defined in the Authorizing Law) interest on an obligation, or both, or as otherwise authorized by the Authorizing Law.
- (d) **Credit Support Default.** Subparagraph (3) of Section 5(a)(iii) is hereby amended by adding the phrase "(or such action is taken by any person or entity appointed or empowered to operate or act on its behalf)" after the word "Document" in the second line thereof.
- (e) **Source of Payments.** Party B agrees that, from and after no later than August 17, 2005, Party B's obligation to pay scheduled ongoing payments shall be: (i) payable from, and secured by a pledge of and lien on, Net Revenues on a parity with the lien on and pledge of Net Revenues created for the payment and security of the Revenue Bonds and (ii) shall be insured pursuant to a

swap insurance policy or financial guarantee insurance policy delivered to Party A in form and substance satisfactory to Party A and issued by an insurer that is acceptable to Party A and which meets Party A's then current credit and legal policies and standard criteria for swap insurers for similar transactions. All other payments under this Agreement, including any Settlement Amount (collectively, "Other Payments"), are, and until the termination of this Agreement pursuant to the terms hereof, shall remain payable and secured as Subordinate Obligations under the Covered Agreement and as security for such Other Payments. Party B hereby grants to Party A a lien and pledge on the Net Revenues which is junior and subordinate to the lien and pledge on the Net Revenues created solely for the payment and security of Prior Lien Bonds and Revenue Bonds. Party B covenants and agrees not to issue or incur any other Subordinate Obligations without the written consent of Party A.

- (f) **Negative Pledge.** Party B shall not pledge or grant a security interest in any of the Net Revenues to secure its obligations under any interest rate swap or other derivative transaction without Party A's consent unless a parity pledge or security interest in such Net Revenues is granted to Party A to secure Party B's obligations under this Agreement.
- (g) **Compliance with Covered Agreement.** Party B will observe, perform and fulfill each covenant, term, and provision in the relevant Covered Agreement applicable to Party B, as any of those covenants, terms, and provisions may be amended, supplemented or modified for the purposes of this Agreement with the prior written consent of Party A (the "Incorporated Provisions"), with the effect, among other things, and without limiting the generality of the foregoing, that Party A will have the benefit of each of the Incorporated Provisions (including without limitation, covenants, right to consent to certain actions subject to consent under the relevant Covered Agreement and delivery of financial statements and other notices and information). In the event the relevant Covered Agreement ceases to be in effect for any reason, including, without limitation, defeasance of the Prior Lien Bonds or Revenue Bonds issued in connection with such Covered Agreement, prior to the termination of this Agreement, the Incorporated Provisions (other than those provisions requiring payments in respect of bonds, notes, warrants or other similar instruments issued in connection with the relevant Covered Agreement) will remain in full force and effect for purposes of this Agreement as though set forth herein until such date on which all of the obligations of Party B under this Agreement have been fully satisfied. The Incorporated Provisions are hereby incorporated by reference and made a part of this Agreement to the same extent as if such provisions were set forth herein. For purposes of this Agreement, the Incorporated Provisions shall be construed as though (i) all references therein to any party making loans, extensions of credit or financial accommodations thereunder or commitments therefor (the "Financings") were to Party A and (ii) to the extent that such Incorporated Provisions are conditioned on or related to the existence of such Financings or Party B having any obligations in connection therewith, all references to such Financings or obligations were to the obligations of Party B under this Agreement. Any amendment, supplement, modification or waiver of any of the Incorporated Provisions without the prior written consent of Party A shall have no force and effect with respect to this Agreement. Any amendment, supplement or modification for which such consent is obtained shall be part of the Incorporated Provisions for purposes of this Agreement.
- (h) **Notice of Incipient Illegality.** If an Incipient Illegality occurs, the Government Entity will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Incipient Illegality and will also give such other information about that Incipient Illegality as the other party may reasonably require.

- (i) **Export of Defaults.** The occurrence or designation of an Early Termination Date on account of an Event of Default or Termination Event with respect to a party hereto ("X") (where X is the Defaulting Party or sole Affected Party) shall constitute a material breach and event of default (howsoever described) under all transactions between X and the other party ("Y") or any Affiliate of Y (whether or not arising under this Agreement, whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) (together, the "Other Transactions"), whereupon Y or any Affiliate of Y shall have the right to terminate, liquidate and otherwise close out any such Other Transactions (and X shall be liable for any damages suffered by Y and any Affiliate of Y as a result thereof).
- (j) **Confirmations.** Party A will deliver to Party B a Confirmation relating to each Transaction.
- (k) **Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):-
  - (i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction.
  - (ii) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.
  - (iii) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.
- (l) **Adjustment Event.** If on the Effective Date or any date thereafter (an "Adjustment Event Date"), the Notional Amount of any Transaction is greater than the outstanding principal amount of the Related Bonds (an "Adjustment Event"), the Notional Amount will be reduced to the extent necessary to make such Notional Amount as of the Adjustment Event Date equal to the outstanding principal amount of the Related Bonds on such date. Upon an adjustment to the Notional Amount, a payment (an "Adjustment Payment") will be due and owing by one party to the other equal to the Market Quotation for this Transaction determined by Party A as if (i) a Termination Event occurred in respect of Party B, (ii) Party B were the only Affected Party with respect to such Termination Event, Party A were the party entitled to calculate the Market Quotation, and the Transaction is the Affected Transaction, (iii) the relevant Adjustment Event Date was designated as the Early Termination Date, (iv) the Notional Amount of the Transaction was an amount equal to the difference between (X) the Notional Amount and (Y) the outstanding principal amount of the Related Bonds on the Adjustment Event Date and the amortization of such Notional Amount is adjusted such that the Notional Amount equals the principal amount of the Related Bonds on any given date (and the Notional Amount amortization schedule shall be so adjusted), and (v) the requirement set forth in the definition of Market Quotation that quotations be obtained from four Reference Market-makers was met by having Party A provide a single

quotation; provided, however, if Party B disputes such quotation, Party A shall seek bids from Reference Market-makers consistent with the provisions of Section 6 of the Agreement. If an Adjustment Payment is a positive number, Party B will pay an amount equal to such Adjustment Payment to Party A; if a Adjustment Payment is a negative number, Party A will pay an amount equal to the absolute value of such Adjustment Payment to Party B. An Adjustment Payment shall be paid by the relevant party on the date on which the Adjustment Event occurs. Notwithstanding anything to the contrary in this Agreement, Party B will not optionally cause an Adjustment Event if, in connection with such Adjustment Event, an Adjustment Payment would be payable by Party B to Party A unless Party B provides evidence reasonably satisfactory to Party A that (i) such Adjustment Payment will be made by Party B on the Adjustment Event Date and (ii) such Adjustment Payment will not cause Party B to be in violation of, or in default under, the Covered Agreement.

- (m) **Net Effective Interest Rate Limitation.** Any other provision of this Agreement or any Confirmation to the contrary notwithstanding, and pursuant to Chapter 1204, Texas Government Code, as amended ("Chapter 1204"), amounts owed by Party B to Party A pursuant to Section 2 of this Agreement net of all amounts owed by Party A to Party B pursuant to Section 2 of this Agreement (the "Net Amount"), in each case with respect to a particular series of Related Bonds, may not exceed an amount (the "Maximum Amount") that, if such payments are treated as additional interest on such Related Bonds, would cause the "net interest cost" of such Related Bonds determined as of any Payment Date to be greater than the maximum "net interest cost" through such date which yields a "net effective interest rate" (as such quoted phrases are defined in Chapter 1204) of 15% on such Related Bonds. Anything to the contrary contained in this Agreement notwithstanding, if a Transaction relates to more than one series of bonds, the Floating Amounts and the Fixed Amounts owed to or by Party A shall be allocated, to the extent permitted by applicable law as evidenced by an opinion of nationally recognized bond counsel qualified to practice law in the State of Texas, among the applicable series of Related Bonds in such a manner as to cause the aggregate Maximum Amount with respect to such Related Bonds to equal the greatest amount permitted under applicable law.

If on any Payment Date the Net Amount is greater than the Maximum Amount, then to the fullest extent permitted by applicable law there shall be added to the amount owed by Party B to Party A on the next Payment Date the positive difference between the Net Amount and the Maximum Amount. In addition, if on any Payment Date, the Net Amount is greater than the Maximum Amount, then Party B shall provide to Party A a verification of the calculation of the Maximum Amount.

- (n) **Limitations on Interest Accruing on Unpaid Amounts.** Any provision of this Agreement to the contrary notwithstanding, in no event shall the amount of interest (as defined and calculated in accordance with applicable law) accruing on any Unpaid Amounts hereunder, contracted for, charged, reserved, received or taken by either party in connection with the transactions hereunder exceed the amount of interest on such Unpaid Amounts which could have been contracted for, charged, reserved, received or taken at the maximum rate of nonusurious interest allowed from time to time by applicable law. If the applicable law is ever judicially interpreted so as to render usurious any payment of interest accruing on Unpaid Amounts hereunder, then notwithstanding anything to the contrary contained in this Agreement, all excess amounts therefore paid or received shall be credited to the balance of the Unpaid Amount owed (or, if such amount has been or would thereby be paid in full, refunded), and the provisions of this Agreement shall immediately be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

Interest payable on any Unpaid Amount shall, to the extent necessary and to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment is made in full so that the rate or amount of interest on such Unpaid Amounts does not exceed the usury ceiling from time to time in effect.

- (o) **Waiver of Immunities.** Section 11(c) of this Agreement is hereby amended to read in its entirety as follows:

“(c) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by the Texas Constitution and other applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement or any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by the Texas Constitution and other applicable law, that it will not claim any such immunity in any Proceedings; provided, however, that such waiver shall not constitute consent by either party to suit in any particular jurisdiction.”

- (p) **Additional Definitions.** As used in this Schedule, capitalized terms herein shall, unless otherwise defined in this Agreement, have the meaning given such terms in the Covered Agreement. The following terms shall have the following meanings:

“**Authorizing Law**” means Chapter 1371, Texas Government Code, as amended.

“**Covered Agreement**” means the Ordinance.

“**Government Entity**” means Party B.

“**Incipient Illegality**” means (a) the enactment by any legislative body with competent jurisdiction over a Government Entity of legislation which, if adopted as law, would render unlawful (i) the performance by such Government Entity of any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of a Transaction or the compliance by such Government Entity with any other material provision of this Agreement relating to such Transaction or (ii) the performance by a Government Entity or a Specified Entity of such Government Entity of any contingent or other obligation which the Government Entity (or such Specified Entity) has under any Credit Support Document relating to such Transaction, (b) any assertion in any legal proceeding, forum or action by a Government Entity, in respect of such Government Entity to the effect that performance under this Agreement is unlawful, (c) a final non-appealable judgment in any legal proceeding is rendered in respect of any entity located or organized under the laws of the state of Texas to the effect that performance under a similar agreement is unlawful (and with respect to any such judgment, Party A receives an opinion of counsel to the effect that a court may find this Agreement to be unlawful on similar grounds) or (d) the occurrence with respect to a Government Entity of any event that constitutes an Illegality.

**“Ordinance”** means collectively the ordinances adopted by Party B authorizing the issuance of each series of Related Bonds as such ordinances may be supplemented and amended from time to time in accordance with their respective terms and the terms hereof.

**“Project/Program”** means the City of Austin, Texas Airport System, which is comprised of airport, heliport and aviation facilities or any interest therein owned, operated or controlled in whole or in part by the City and includes Austin Bergstrom International Airport, but expressly excludes any heliport or heliports operated by city departments other than the Aviation Department.

**“Related Bonds”** means the bonds, notes or other obligations of Party B identified as such in each Confirmation.

**IN WITNESS WHEREOF**, the parties have executed this Schedule by their duly authorized officers as of the date hereof.

**MORGAN STANLEY CAPITAL  
SERVICES INC.**

By: \_\_\_\_\_  
Name:  
Title:

**CITY OF AUSTIN, TEXAS**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A-1**

**FORM OF OPINION OF OUTSIDE COUNSEL  
FOR PARTY A  
[LETTERHEAD OF CADWALADER, WICKERSHAM & TAFT]**

[Date]

[Name]  
[Address]

Ladies and Gentlemen:

We act as a counsel to Morgan Stanley Capital Services Inc. ("MSCS") in connection with certain matters. We have been requested by MSCS to review the documents referred to herein and to render the opinion expressed herein. In such connection, we have reviewed, (i) an ISDA Master Agreement dated as of \_\_\_\_\_, 200\_ (including the Schedule and Credit Support Annex thereto) and (ii) a Confirmation dated \_\_\_\_\_, 200\_, (collectively, the "Agreement") between MSCS and \_\_\_\_\_ (the "Counterparty"). In these regards, we have reviewed original, conformed, reproduction, or specimen copies, identified to our satisfaction, of the Agreement and other relevant documents, and have made such examination of applicable law as we have deemed necessary for the purpose of rendering the opinion expressed herein.

Based upon the foregoing, we are of the opinion, subject to the qualifications expressed herein, that the Agreement constitutes the legal and binding agreement of MSCS and is enforceable against MSCS in accordance with its terms.

The opinion expressed herein is subject to the following qualifications:

(A) We are licensed to practice law in the State of New York, for purposes of the opinion expressed herein we do not purport to be experts on any law other than the law of the State of New York and the federal law of the United States of America, and we do not express any opinion herein concerning any law other than the substantive law of the State of New York and of the United States of America (as applicable, without regard to conflict of law principles).

(B) In our review of the documents referred to in the first paragraph of this letter, we have assumed and have not independently verified that all signatures are genuine, that all documents submitted to or obtained by us as originals are authentic, and that all documents submitted to or obtained by us as conformed, reproduction, or specimen copies conform to the original documents and all such originals are authentic.

(C) As to certain matters of fact, we have relied upon and have not independently verified statements, representations, and warranties of MSCS and its representatives, including statements, representations, and warranties contained in the Agreement, and have assumed and have not independently verified that all such statements, representations, and warranties are true, accurate, and complete.

(D) In rendering the opinions expressed herein, we have relied upon the opinions expressed in the letter dated the date hereof of Mark Steffensen, Esq., Counsel to MSCS, addressed to the Counterparty in connection with the Agreement, and we have assumed and have not independently verified under the law of any jurisdiction that all such opinions are valid, reasonable, true, accurate, and complete.

(E) We have assumed and have not independently verified under the law of any jurisdiction the legal capacity, power, and authority of the Counterparty to execute, deliver, and perform its obligations under the Agreement, and of the individuals who executed and delivered the Agreement on behalf of the Counterparty to do so. We have also assumed and have not independently verified under the law of any jurisdiction that the Agreement constitutes the legal, valid, and binding agreement of the Counterparty and is enforceable against the Counterparty in accordance with its terms. In addition, we have relied upon and have not independently verified statements, representations, and warranties of the Counterparty and its representatives, including statements, representations, and warranties contained in the Agreement, and have assumed and have not independently verified that all such statements, representations, and warranties are true, accurate, and complete.

(F) The enforceability of each of the Agreement and the rights and remedies thereunder are subject to, and may be limited by: (i) applicable bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship, or other similar laws from time to time in effect relating to or affecting generally the enforcement of creditors' rights; (ii) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith, and fair dealing (regardless of whether considered in a proceeding at law or in equity); (iii) the availability of equitable remedies; (iv) the discretion of a court or other authority or body to grant, impose, or render remedies under specific circumstances; (v) Sections 9-406 and 9-408 of the New York Uniform Commercial Code to the extent the Agreement purports to prohibit, restrict, or require the consent of the other party for, the transfer of, or the creation, attachment or perfection of a security interest in, the Agreement or an interest therein; (vi) limitations imposed by public policy, although we are not aware of any such limitations that would be relevant to the enforceability of the Agreement; (vii) each party to the Agreement acting in a commercially reasonable manner and in good faith in performing its obligations and exercising its rights and remedies thereunder; and (viii) the discretion of a court or other authority or body to invalidate or decline to enforce any right, remedy, or provision of the Agreement (including without limitation the termination payment provisions of the Agreement) determined by it to be a penalty.

(G) We express no opinion herein as to (i) whether a court or other authority or body located outside of the State of New York would enforce the governing law and submission to jurisdiction provisions of the Agreement and (ii) the creation, legality, validity, perfection, enforceability, or priority of any lien, security interest, or other encumbrance created or purported to be created pursuant to the agreement.

We are furnishing this letter to you solely for your benefit in connection with the transactions referred to herein. Without our prior written consent, this letter is not to be relied upon, used, circulated, quoted or otherwise referred to by, or assigned to, any other person (including any person that seeks to assert your rights in respect of this letter (other than your successor in interest by means of merger, consolidation, transfer of a business or other similar transaction)) or for any other purpose. In addition, we disclaim any obligation to update this letter for changes in fact or law, or otherwise.

Very truly yours,

**EXHIBIT A-2**

**FORM OF OPINION OF INTERNAL COUNSEL  
FOR PARTY A**

[DATE]

[COUNTERPARTY]  
[ADDRESS]

Ladies and Gentlemen:

As Counsel to Morgan Stanley Capital Services Inc., a Delaware corporation ("Morgan Stanley"), I advise you as follows in connection with the ISDA Master Agreement, the Schedule [and Credit Support Annex] thereto dated as of [DATE], and the Confirmation thereunder dated as of [DATE] (the "Agreement") between Morgan Stanley and you.

In arriving at the opinions expressed below, I have, or someone under my supervision has, examined an original or copy of: (i) the ISDA Master Agreement and (ii) the Schedule [and Credit Support Annex] to the ISDA Master Agreement, and (iii) the Confirmation, each executed on behalf of Morgan Stanley. I have, or someone under my supervision has, also reviewed such corporate records of Morgan Stanley, certificates of public officials, officers of Morgan Stanley and other persons, and such other documents, agreements and instruments, and such matters of law, as I have deemed necessary as a basis for the opinions expressed in this letter. In such review, I have relied as to certain matters on information obtained from public officials, officers of Morgan Stanley and other sources believed by me to be reliable, and I have assumed the genuineness of all signatures, the authenticity of all documents submitted to me as originals, the conformity to original documents of all documents submitted to me as certified, photostatic or reproduced copies and the authenticity of the originals of all such latter documents. Based upon the aforementioned examination and review, and subject to the foregoing and following comments and qualifications, it is my opinion that:

- (1) Morgan Stanley has been duly incorporated and is an existing corporation in good standing under the laws of the State of Delaware.
- (2) The Agreement has been duly authorized, executed and delivered by Morgan Stanley.
- (3) The execution, delivery and performance of the Agreement by Morgan Stanley does not contravene any provision of the Certificate of Incorporation or By-Laws of Morgan Stanley.

In connection with my opinion in paragraph (2) above, I note that, as of the date of this opinion, a judgment for money in an action based on the Agreement in a Federal or state court in the United States ordinarily would be enforced in the United States only in United States dollars. The date used to determine the rate of conversion of the foreign currency or currency unit in which an obligation under the Agreement is denominated into United States dollars will depend on various factors, including which court renders the judgment. Under Section 27 of the New York Judiciary Law, a state court in the State of New York rendering a judgment on a claim under the Agreement denominated in a foreign currency or currency unit would be required to render such judgment in the foreign currency or currency unit in which the claim is denominated, and that judgment would be converted into United States dollars at the exchange rate prevailing on the date of entry of the judgment.

In rendering the foregoing opinions, I have assumed, with respect to all of the documents referred to in this opinion letter, that (except as to Morgan Stanley): (i) each party to such documents is duly organized and validly existing; (ii) each party to such documents has the requisite power and authority (corporate or other) to execute and deliver such documents and perform its obligations under such documents; (iii) the execution, delivery and performance of such documents have been duly authorized by each party thereto; (iv) such documents have been duly executed and delivered by each party thereto; (v) such documents constitute the legal, valid and binding agreement of each of the parties thereto, enforceable against each such party in accordance with their respective terms; and (vi) each party to such documents has obtained all consents, approvals, authorizations, orders, licenses, registrations and qualifications (including any applicable foreign exchange licenses) from, and has made all filings and registrations with, all governmental or regulatory authorities or agencies required for the execution or delivery of, or for the performance or incurrence of any obligations or liabilities under, such documents.

In rendering the foregoing opinions, I am not addressing any matters relating to any specific transactions entered into pursuant to the Master Agreement. Furthermore, I express no opinion as to the validity and enforceability of any provision of the Agreement that (i) purports to limit, condition or impose remedies for the exercise of either party's ability to transfer its rights under the Agreement or a Confirmation in a manner contrary to Section 9-406 or 9-408 of the New York Uniform Commercial Code; (ii) requires any amendment or waiver to be in writing, to the extent that an oral agreement or waiver, or an implied agreement or waiver by trade practice or course of conduct, has been created that modifies any such provision; or (iii) is determined to be a penalty or a forfeiture, including by reason of a party being required or allowed to pay, deliver, receive or recover (or not to pay, deliver, receive or recover) any amount or item. In addition, I express no opinions as to any violation of, or any consent or approval required under, any law or regulation which may be applicable to Morgan Stanley as a result of the involvement of any other party to the Agreement. Any foregoing opinion relating to enforceability or performance by Morgan Stanley of its obligations are qualified by and subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

The foregoing opinion is limited to the Federal laws of the United States, the laws of the State of New York and the General Corporation Law of the State of Delaware, and I am expressing no opinion as to the effect of the laws of any other jurisdiction.

I am furnishing this opinion to you solely for your benefit in connection with the above-referenced Agreement. Except for your own internal use, this opinion is not to be used or circulated, quoted or otherwise referred to, or relied upon without my express written consent. I do not undertake to update, revise or supplement any opinion or statement herein for any reason whatsoever.

Very truly yours,

Counsel

**EXHIBIT A-3**

**FORM OF OPINION OF INTERNAL COUNSEL  
FOR PARTY A**

[DATE]

[COUNTERPARTY]  
[ADDRESS]

Ladies and Gentlemen:

As Counsel to Morgan Stanley, a Delaware corporation ("Morgan Stanley"), I advise you as follows in connection with the Guarantee issued by Morgan Stanley, dated [DATE] (the "Guarantee") in connection with the ISDA Master Agreement, dated as of [DATE] between Morgan Stanley Capital Services Inc. and [COUNTERPARTY] (the "Agreement").

In arriving at the opinions expressed below, I have, or someone under my supervision has, examined an original or copy of the Guarantee executed on behalf of Morgan Stanley. I have, or someone under my supervision has, also reviewed such corporate records of Morgan Stanley, certificates of public officials, officers of Morgan Stanley and other persons, and such other documents, agreements and instruments, and such matters of law, as I have deemed necessary as a basis for the opinions expressed in this letter. In such review, I have relied as to certain matters on information obtained from public officials, officers of Morgan Stanley and other sources believed by me to be reliable, and I have assumed the genuineness of all signatures, the authenticity of all documents submitted to me as originals, the conformity to original documents of all documents submitted to me as certified, photostatic or reproduced copies and the authenticity of the originals of all such latter documents. Based upon the aforementioned examination and review, and subject to the foregoing and following comments and qualifications, it is my opinion that:

- (1) Morgan Stanley has been duly incorporated and is an existing corporation in good standing under the laws of the State of Delaware.
- (2) The Guarantee has been duly authorized, executed and delivered by Morgan Stanley and the Guarantee constitutes the valid and legally binding obligation of Morgan Stanley enforceable in accordance with its terms.
- (3) The execution, delivery and performance of the Guarantee by Morgan Stanley does not contravene any provision of the Certificate of Incorporation or By-Laws of Morgan Stanley.

Any foregoing opinion relating to enforceability or performance by Morgan Stanley of its obligations are qualified by and subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

I am admitted to practice in the State of New York. The foregoing opinion is limited to the Federal laws of the United States, the laws of the State of New York and the General Corporation Law of the State of Delaware, and I am expressing no opinion as to the effect of the laws of any other jurisdiction.

I am furnishing this opinion to you solely for your benefit in connection with the above-referenced Guarantee. Except for your own internal use, this opinion is not to be used or circulated, quoted or otherwise referred to, or relied upon without my express written consent. I do not undertake to update, revise or supplement any opinion or statement herein for any reason whatsoever.

Very truly yours,

Counsel

## EXHIBIT B

### FORM OF GUARANTEE OF MORGAN STANLEY

Date

[Address]

**Ladies and Gentlemen:**

In consideration of that certain ISDA Master Agreement dated as of [date] between Morgan Stanley Capital Services Inc., a Delaware corporation (hereinafter "MSCS") and [counterparty] (hereinafter "Counterparty") (such ISDA Master Agreement, together with each Confirmation exchanged between the parties pursuant thereto, hereinafter the "Agreement"), Morgan Stanley, a Delaware corporation (hereinafter "MS"), hereby irrevocably and unconditionally guarantees to Counterparty, with effect from the date of the Agreement, the due and punctual payment of all amounts payable by MSCS under the Agreement when the same shall become due and payable, whether on Scheduled Payment Dates, upon demand, upon declaration of termination or otherwise, in accordance with the terms of the Agreement and giving effect to any applicable grace period. Upon failure of MSCS punctually to pay any such amounts, and upon written demand by Counterparty to MS at its address set forth in the signature block of this Guarantee (or to such other address as MS may specify in writing), MS agrees to pay or cause to be paid such amounts; provided that delay by Counterparty in giving such demand shall in no event affect MS's obligations under this Guarantee.

MS hereby agrees that its obligations hereunder shall be unconditional and will not be discharged except by complete payment of the amounts payable under the Agreement, irrespective of any claim as to the Agreement's validity, regularity or enforceability or the lack of authority of MSCS to execute or deliver the Agreement; or any change in or amendment to the Agreement; or any waiver or consent by Counterparty with respect to any provisions thereof; or the absence of any action to enforce the Agreement or the recovery of any judgment against MSCS or of any action to enforce a judgment against MSCS under the Agreement; or any similar circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor generally. MS hereby waives diligence, presentment, demand on MSCS for payment or otherwise (except as provided hereinabove), filing of claims, requirement of a prior proceeding against MSCS and protest or notice, except as provided for in the Agreement with respect to amounts payable by MSCS. If at any time payment under the Agreement is rescinded or must be otherwise restored or returned by Counterparty upon the insolvency, bankruptcy or reorganization of MSCS or MS or otherwise, MS's obligations hereunder with respect to such payment shall be reinstated upon such restoration or return being made by Counterparty.

- (1) MS represents to Counterparty as of the date hereof, which representations will be deemed to be repeated by MS on each date on which a Transaction is entered into, that:
- (2) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guarantee and to perform the provisions of this Guarantee on its part to be performed;
- (3) its execution, delivery and performance of this Guarantee have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its

certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;

- (4) all consents, authorizations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
- (5) this Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

By accepting this Guarantee and entering into the Agreement, Counterparty agrees that MS shall be subrogated to all rights of Counterparty against MSCS in respect of any amounts paid by MS pursuant to this Guarantee, provided that MS shall be entitled to enforce or to receive any payment arising out of or based upon such right of subrogation only to the extent that it has paid all amounts payable by MSCS under the Agreement.

This Guarantee shall be governed by and construed in accordance with the laws of the State of New York. All capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Agreement.

**MORGAN STANLEY**

By: \_\_\_\_\_

Name:  
Title:  
Address: 1585 Broadway  
3rd Floor  
New York, NY 10036  
Attention: Derivative Products Group  
Fax No.: (212) 761-0162

**EXHIBIT C**

**FORM OF CREDIT SUPPORT ANNEX  
PARAGRAPH 13**

**Paragraph 13. Elections and Variables**

(a) **Security Interest for "Obligations"**. The term "Obligations" as used in this Annex includes the following additional obligations with respect to Party A and Party B: None.

(b) **Credit Support Obligations.**

(i) **"Delivery Amount", "Return Amount" and "Credit Support Amount"** each has the meaning specified in Paragraph 3.

(ii) **Eligible Collateral.** The following items will qualify as "Eligible Collateral" for Party A and Party B:

	<b>Valuation Percentage</b>
(A) Cash	100%
(B) Treasury Securities and Agency Notes having a remaining maturity of:	
Not more than 1 year	100%
More than 1 year but not more than 2 years	99%
More than 2 years but not more than 5 years	98%
More than 5 years but not more than 10 years	97%
More than 10 years	95%
(C) Any other item agreed upon in writing from time to time by the parties	As agreed by the parties

(iii) **Other Eligible Support:** Not applicable.

(iv) **Thresholds.**

(i) **"Independent Amount"** means, with respect to a party, at any time the aggregate of any Independent Amounts specified with respect to such party in the Confirmations of all Transactions outstanding at that time.

(ii) **"Threshold"** and **"Minimum Transfer Amount"** respectively mean:

(A) with respect to Party A, at any time the amount specified in the table below under the relevant heading opposite whatever is the lower of the ratings at that time assigned by Standard & Poor's Ratings Group ("S&P") and Moody's Investors Services, Inc. ("Moody's") to the senior, unsecured, unenhanced debt of Morgan Stanley ("MS") or,

(B) with respect to Party B, at any time the amount specified in the table below under the relevant heading opposite whatever is the lower of the

unenanced ratings at that time assigned by S&P and Moody's to the Prior Lien Bonds.

provided that (a) if the senior, unsecured, unenanced debt of MS or the Prior Lien Bonds of Party B are rated by only one of S&P or Moody's, the Threshold and the Minimum Transfer Amount with respect to Party A or Party B, as the case may be, will be the amount specified in the table below under the relevant heading opposite that rating and (b) if an Event of Default or Potential Event of Default with respect to Party A or Party B has occurred and is continuing, the Threshold and the Minimum Transfer Amount with respect to such party shall each be zero.

#### Ratings Table

Moody's	S&P	Threshold	Minimum Transfer Amount
Aa3 or above	AA- or above	USD 30,000,000	USD 1,000,000
A1 to A3	A+ to A-	USD 20,000,000	USD 1,000,000
Baa1	BBB+	USD 10,000,000	USD 1,000,000
Baa2 and below or unrated (if previously rated) by S&P and Moody's	BBB and below or unrated (if previously rated) by S&P and Moody's	Zero	USD 100,000

(iii) **Rounding.** The Delivery Amount and the Return Amount will not be rounded up or down.

(iv) **Party B Not Obligated To Post Collateral.** Notwithstanding anything in this Annex to the contrary, Party B shall not be obligated to post any Eligible Collateral hereunder with respect to a Specified Transaction unless (a) (i) the insurer then providing a swap insurance policy or financial guarantee insurance policy insuring payment of Party B's periodic ongoing payments under such Specified Transaction fails to maintain the ratings set forth in the Confirmation for such Specified Transaction or the Schedule, as applicable or (ii) such insurer is in conservation, liquidation, or receivership under applicable law, and (b) Party B has not obtained a Credit Support Provider acceptable to Party A whose obligations are pursuant to a Credit Support Document acceptable to Party A in accordance with the Confirmation for such Specified Transaction or the Schedule, as applicable.

(c) **Valuation and Timing.**

(i) **"Valuation Agent"** means for purposes of Paragraphs 3 and 5, the party making the demand under Paragraph 3, and, for purposes of Paragraph (d), the Secured Party receiving or deemed to receive the Distributions or the Interest Amount, as applicable.

(ii) **"Valuation Date"** means each New York Banking Day (as defined in the 2000 ISDA Definitions as published by the International Swaps and Derivatives Association, Inc. ("ISDA") without regard to any amendment after the date hereof (the "ISDA Definitions")).

- (iii) **“Valuation Time”** means the close of business in New York on the New York Banking Day before the Valuation Date or date of calculation, as applicable, or any time on the Valuation Date or date of calculation, as applicable; provided that the calculations of Value and Exposure will be made as of approximately the same time on the same date.
  - (iv) **“Notification Time”** means 10:00 a.m., New York time, on a Local Business Day.
  - (v) **“Transfer Timing”** Paragraph 4(b) is amended by (A) deleting the word “next” in the third line thereof and replacing it with the word “same”; and (B) deleting the words “second Local Business Day thereafter” in the fifth line thereof and replacing them with the words “next Local Business Day”.
- (d) **Conditions Precedent and Secured Party’s Rights and Remedies.** For the purposes of Paragraph 8(a), each Termination Event will constitute a Specified Condition with respect to a Pledgor, if the Pledgor fails to pay when due any amount payable by it in connection with an Early Termination Date designated in connection with that Termination Event. For all other purposes of this Annex, each Additional Termination Event will be a Specified Condition with respect to the relevant party.
- (c) **Substitution.**
- (i) **“Substitution Date”** has the meaning specified in Paragraph 4(d)(ii).
  - (ii) **Consent.** The Pledgor need not obtain the Secured Party’s consent for any substitution pursuant to Paragraph 4(d).
- (f) **Dispute Resolution.**
- (i) **“Resolution Time”** means 1:00 p.m., New York time, on the Local Business Day following the date on which the notice is given that gives rise to a dispute under Paragraph 5.
  - (ii) **Value.** For the purpose of Paragraphs 5(i)(C) and 5(ii), the Value of Posted Credit Support or of any Transfer of Eligible Credit Support or Posted Credit Support, as the case may be, will be calculated by the Valuation Agent in accordance with standard market practice using third party sources (such as, by way of example only, Bloomberg or Reuters) where available.
  - (iii) **Alternative.** Paragraph 5 is amended by substituting the following for subclauses (1) and (2):  
  
“(1) the Disputing Party will notify the other party and the Valuation Agent (if the Valuation Agent is not the other party) not later than the close of business on the Local Business Day (X) that the Transfer otherwise would have been due if no dispute had existed in the case of (I) above, or (Y) following the date of Transfer in the case of (II) above, (2) subject to Paragraph 4(a), the appropriate party will Transfer the undisputed amount to the other party not later than the close of business on the Local Business Day (X) that the Transfer otherwise would have been due if no dispute had existed in the case of (I) above, or (Y) following the date of Transfer in the case of (II) above,”

(g) **Holding and Using Posted Collateral.**

(i) **Eligibility to Hold Posted Collateral; Custodians.** Party A and its Custodian will be entitled to hold Posted Collateral pursuant to Paragraph 6(b); *provided* that the following conditions applicable to it are satisfied:

- (i) Party A is not a Defaulting Party.
- (ii) Posted Collateral may be held only in the following jurisdictions: the United States of America.

Initially, the **Custodian** for Party A is, with respect to Cash in the form of USD, Citibank, New York and, with respect to all other Posted Collateral, Bank of New York, New York, a/c Morgan Stanley & Co. Incorporated.

Party B will be entitled to hold Posted Collateral itself or through its Custodian pursuant to Paragraph 6(b); *provided* that the following conditions applicable to it are satisfied:

- (A) Party B is not a Defaulting Party.
- (B) Posted Collateral may be held only in the following jurisdictions: the United States of America.

Initially, the **Custodian** for Party B is [\_\_\_\_\_].

(ii) **Use of Posted Collateral.** The provisions of Paragraph 6(c) will apply.

(h) **Distributions and Interest Amount.**

(i) **"Interest Rate".** The "Interest Rate" will be, with respect to Eligible Collateral in the form of Cash, for any day, the rate equal to the rate opposite the caption "Federal Funds (Effective)" for such day as published for such day in Federal Reserve Publication H.15(519) (or any successor publication) as published by the Board of Governors of the U.S. Federal Reserve System.

(ii) **Transfer of Interest Amount.** The Transfer of the Interest Amount will be made on the last Local Business Day of each calendar month and on any Local Business Day that Posted Collateral in the form of cash in the relevant currency is Transferred to the Pledgor pursuant to Paragraph 3(b).

(iii) **Alternative to Interest Amount.** The provisions of Paragraph 6(d)(ii) will apply.

(i) **Additional Representation(s).** Each of Party A and Party B represents that it is not a U.S. bank or thrift institution subject to the Federal Deposit Insurance Act as amended (including amendments effected by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

(j) **Other Eligible Support and Other Posted Support.** "Value" and "Transfer" with respect to Other Eligible Support and Other Posted Support each means: Not applicable.

(k) **Demands and Notices**

All demands, specifications and notices to Party A under this Annex will be made to:

Morgan Stanley Capital Services Inc.  
1585 Broadway  
3rd Floor  
New York, NY 10036  
Attn: FID Collateral Manager  
Phone: 212-761-0877  
Fax: 212-507-4949  
email: nyfidcoll@morganstanley.com

and all demands, specifications and notices to Party B under this Annex will be made to:

[PLEASE PROVIDE]

*provided* that any demand, specification or notice may be made by telephone (“**Telephone Notice**”) between employees of each party if such Telephone Notice is confirmed by a subsequent written instruction (which may be delivered via facsimile or email) by the close of business on the same day that such Telephone Notice is given.

(l) **Addresses for Transfers.**

Party A:  
Cash: CITIBANK, New York  
ABA No.: 021 000 089  
Account No.: 3053 - 9883

Treasury Securities  
and Agency Notes: Bank of New York, New York/Morgan Stanley & Co.  
Incorporated  
ABA No.: 021000018

Party B: [PLEASE PROVIDE TO EXPEDITE ANY DELIVERY/RETURN OF  
ELIGIBLE COLLATERAL]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(m) **Other Provisions.**

- (i) Notwithstanding any other provision in this Agreement to the contrary, no full or partial failure to exercise and no delay in exercising, on the part of Party A or Party B, any right, remedy, power or privilege permitted hereunder shall operate in any way as a waiver thereof by such party, including without limitation any failure to exercise or any delay in exercising to any or to the full extent of such party's rights with respect to transfer timing pursuant to Paragraph 4(b), regardless of the frequency of such failure or delay.
- (ii) In all cases, in order to facilitate calculation of the Delivery Amount and the Return Amount for a particular Valuation Date in accordance with Paragraph 3 of this Annex:

- (A) Eligible Collateral;
- (B) Exposure; and
- (C) Posted Collateral

shall each be expressed in US Dollars. If any of these items are expressed in a currency other than US Dollars, then they shall be converted into US Dollar amounts at the spot exchange rate determined by the Valuation Agent on that Valuation Date.

- (iii) **Form of Annex.** The parties hereby agree that the text of the body of this Annex is intended to be the printed form of 1994 ISDA Credit Support Annex (Bilateral Form – ISDA Agreements Subject to New York Law Only version) as published and copyrighted by the International Swaps and Derivatives Association, Inc.

(n) **Additional Definitions**

- (i) **“Agency Notes”** means U.S. Dollar-denominated fixed rate, non-amortizing, non-mortgage-backed, senior debt securities of fixed maturity, rated Aaa by Moody’s and AAA by S&P and issued by any of the Federal Home Loan Banks (including their consolidated obligations issued through the Office of Finance of the Federal Home Loan Bank System), the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or the Federal Farm Credit Bank.
- (ii) **“Treasury Securities”** means U.S. Dollar-denominated senior debt securities of the United States of America issued by the U.S. Treasury Department and backed by the full faith and credit of the United States of America.

**IN WITNESS WHEREOF**, the parties have executed this Credit Support Annex by their duly authorized officers as of the date hereof.

**MORGAN STANLEY CAPITAL  
SERVICES INC.**

By: \_\_\_\_\_  
Name:  
Title:

**CITY OF AUSTIN, TEXAS**

By: \_\_\_\_\_  
Name:  
Title:

# ISDA®

International Swaps and Derivatives Association, Inc.

## CREDIT SUPPORT ANNEX

to the Schedule to the

.....

dated as of .....

between

..... and .....

("Party A")

("Party B")

This Annex supplements, forms part of, and is subject to, the above-referenced Agreement, is part of its Schedule and is a Credit Support Document under this Agreement with respect to each party.

Accordingly, the parties agree as follows:—

### Paragraph 1. Interpretation

(a) **Definitions and Inconsistency.** Capitalized terms not otherwise defined herein or elsewhere in this Agreement have the meanings specified pursuant to Paragraph 12, and all references in this Annex to Paragraphs are to Paragraphs of this Annex. In the event of any inconsistency between this Annex and the other provisions of this Schedule, this Annex will prevail, and in the event of any inconsistency between Paragraph 13 and the other provisions of this Annex, Paragraph 13 will prevail.

(b) **Secured Party and Pledgor.** All references in this Annex to the "Secured Party" will be to either party when acting in that capacity and all corresponding references to the "Pledgor" will be to the other party when acting in that capacity; *provided, however*, that if Other Posted Support is held by a party to this Annex, all references herein to that party as the Secured Party with respect to that Other Posted Support will be to that party as the beneficiary thereof and will not subject that support or that party as the beneficiary thereof to provisions of law generally relating to security interests and secured parties.

### Paragraph 2. Security Interest

Each party, as the Pledgor, hereby pledges to the other party, as the Secured Party, as security for its Obligations, and grants to the Secured Party a first priority continuing security interest in, lien on and right of Set-off against all Posted Collateral Transferred to or received by the Secured Party hereunder. Upon the Transfer by the Secured Party to the Pledgor of Posted Collateral, the security interest and lien granted hereunder on that Posted Collateral will be released immediately and, to the extent possible, without any further action by either party.

### **Paragraph 3. Credit Support Obligations**

(a) **Delivery Amount.** Subject to Paragraphs 4 and 5, upon demand made by the Secured Party on or promptly following a Valuation Date, if the Delivery Amount for that Valuation Date equals or exceeds the Pledgor's Minimum Transfer Amount, then the Pledgor will Transfer to the Secured Party Eligible Credit Support having a Value as of the date of Transfer at least equal to the applicable Delivery Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "**Delivery Amount**" applicable to the Pledgor for any Valuation Date will equal the amount by which:

(i) the Credit Support Amount  
exceeds

(ii) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party.

(b) **Return Amount.** Subject to Paragraphs 4 and 5, upon a demand made by the Pledgor on or promptly following a Valuation Date, if the Return Amount for that Valuation Date equals or exceeds Secured Party's Minimum Transfer Amount, then the Secured Party will Transfer to the Pledgor Posted Credit Support specified by the Pledgor in that demand having a Value as of the date of Transfer as close as practicable to the applicable Return Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "**Return Amount**" applicable to the Secured Party for any Valuation Date will equal the amount by which:

(i) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party  
exceeds

(ii) the Credit Support Amount.

"**Credit Support Amount**" means, unless otherwise specified in Paragraph 13, for any Valuation Date (i) the Secured Party's Exposure for that Valuation Date plus (ii) the aggregate of all Independent Amounts applicable to the Pledgor, if any, minus (iii) all Independent Amounts applicable to the Secured Party, if any, minus (iv) the Pledgor's Threshold; *provided, however*, that the Credit Support Amount will be deemed to be zero whenever the calculation of Credit Support Amount yields a number less than zero.

### **Paragraph 4. Conditions Precedent, Transfer Timing, Calculations and Substitutions**

(a) **Conditions Precedent.** Each Transfer obligation of the Pledgor under Paragraphs 3 and 5 and of the Secured Party under Paragraphs 3, 4(d)(ii), 5 and 6(d) is subject to the conditions precedent that:

(i) no Event of Default, Potential Event of Default or Specified Condition has occurred and is continuing with respect to the other party; and

(ii) no Early Termination Date for which any unsatisfied payment obligations exist has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the other party.

(b) **Transfer Timing.** Subject to Paragraphs 4(a) and 5 and unless otherwise specified, if a demand for the Transfer of Eligible Credit Support or Posted Credit Support is made by the Notification Time, then the relevant Transfer will be made not later than the close of business on the next Local Business Day; if a demand is made after the Notification Time, then the relevant Transfer will be made not later than the close of business on the second Local Business Day thereafter.

(c) **Calculations.** All calculations of Value and Exposure for purposes of Paragraphs 3 and 6(d) will be made by the Valuation Agent as of the Valuation Time. The Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) of its calculations not later than the Notification Time on the Local Business Day following the applicable Valuation Date (or in the case of Paragraph 6(d), following the date of calculation).

(d) **Substitutions.**

(i) Unless otherwise specified in Paragraph 13, upon notice to the Secured Party specifying the items of Posted Credit Support to be exchanged, the Pledgor may, on any Local Business Day, Transfer to the Secured Party substitute Eligible Credit Support (the "Substitute Credit Support"); and

(ii) subject to Paragraph 4(a), the Secured Party will Transfer to the Pledgor the items of Posted Credit Support specified by the Pledgor in its notice not later than the Local Business Day following the date on which the Secured Party receives the Substitute Credit Support, unless otherwise specified in Paragraph 13 (the "Substitution Date"); *provided* that the Secured Party will only be obligated to Transfer Posted Credit Support with a Value as of the date of Transfer of that Posted Credit Support equal to the Value as of that date of the Substitute Credit Support.

**Paragraph 5. Dispute Resolution**

If a party (a "Disputing Party") disputes (I) the Valuation Agent's calculation of a Delivery Amount or a Return Amount or (II) the Value of any Transfer of Eligible Credit Support or Posted Credit Support, then (1) the Disputing Party will notify the other party and the Valuation Agent (if the Valuation Agent is not the other party) not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in case of (I) above or (Y) the date of Transfer in the case of (II) above, (2) subject to Paragraph 4(a), the appropriate party will Transfer the undisputed amount to the other party not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (3) the parties will consult with each other in an attempt to resolve the dispute and (4) if they fail to resolve the dispute by the Resolution Time, then:

(i) In the case of a dispute involving a Delivery Amount or Return Amount, unless otherwise specified in Paragraph 13, the Valuation Agent will recalculate the Exposure and the Value as of the Recalculation Date by:

(A) utilizing any calculations of Exposure for the Transactions (or Swap Transactions) that the parties have agreed are not in dispute;

(B) calculating the Exposure for the Transactions (or Swap Transactions) in dispute by seeking four actual quotations at mid-market from Reference Market-makers for purposes of calculating Market Quotation, and taking the arithmetic average of those obtained; *provided* that if four quotations are not available for a particular Transaction (or Swap Transaction), then fewer than four quotations may be used for that Transaction (or Swap Transaction); and if no quotations are available for a particular Transaction (or Swap Transaction), then the Valuation Agent's original calculations will be used for that Transaction (or Swap Transaction); and

(C) utilizing the procedures specified in Paragraph 13 for calculating the Value, if disputed, of Posted Credit Support.

(ii) In the case of a dispute involving the Value of any Transfer of Eligible Credit Support or Posted Credit Support, the Valuation Agent will recalculate the Value as of the date of Transfer pursuant to Paragraph 13.

Following a recalculation pursuant to this Paragraph, the Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) not later than the Notification Time on the Local Business Day following the Resolution Time. The appropriate party will, upon demand following that notice by the Valuation Agent or a resolution pursuant to (3) above and subject to Paragraphs 4(a) and 4(b), make the appropriate Transfer.

**Paragraph 6. Holding and Using Posted Collateral**

(a) **Care of Posted Collateral.** Without limiting the Secured Party's rights under Paragraph 6(c), the Secured Party will exercise reasonable care to assure the safe custody of all Posted Collateral to the extent required by applicable law, and in any event the Secured Party will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, the Secured Party will have no duty with respect to Posted Collateral, including, without limitation, any duty to collect any Distributions, or enforce or preserve any rights pertaining thereto.

(b) **Eligibility to Hold Posted Collateral; Custodians.**

(i) **General.** Subject to the satisfaction of any conditions specified in Paragraph 13 for holding Posted Collateral, the Secured Party will be entitled to hold Posted Collateral or to appoint an agent (a "Custodian") to hold Posted Collateral for the Secured Party. Upon notice by the Secured Party to the Pledgor of the appointment of a Custodian, the Pledgor's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Posted Collateral by a Custodian will be deemed to be the holding of that Posted Collateral by the Secured Party for which the Custodian is acting.

(ii) **Failure to Satisfy Conditions.** If the Secured Party or its Custodian fails to satisfy any conditions for holding Posted Collateral, then upon a demand made by the Pledgor, the Secured Party will, not later than five Local Business Days after the demand, Transfer or cause its Custodian to Transfer all Posted Collateral held by it to a Custodian that satisfies those conditions or to the Secured Party if it satisfies those conditions.

(iii) **Liability.** The Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(c) **Use of Posted Collateral.** Unless otherwise specified in Paragraph 13 and without limiting the rights and obligations of the parties under Paragraphs 3, 4(d)(ii), 5, 6(d) and 8, if the Secured Party is not a Defaulting Party or an Affected Party with respect to a Specified Condition and no Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then the Secured Party will, notwithstanding Section 9-207 of the New York Uniform Commercial Code, have the right to:

(i) sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business any Posted Collateral it holds, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor; and

(ii) register any Posted Collateral in the name of the Secured Party, its Custodian or a nominee for either.

For purposes of the obligation to Transfer Eligible Credit Support or Posted Credit Support pursuant to Paragraphs 3 and 5 and any rights or remedies authorized under this Agreement, the Secured Party will be deemed to continue to hold all Posted Collateral and to receive Distributions made thereon, regardless of whether the Secured Party has exercised any rights with respect to any Posted Collateral pursuant to (i) or (ii) above.

(d) **Distributions and Interest Amount.**

(i) **Distributions.** Subject to Paragraph 4(a), if the Secured Party receives or is deemed to receive Distributions on a Local Business Day, it will Transfer to the Pledgor not later than the following Local Business Day any Distributions it receives or is deemed to receive to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose).

(ii) **Interest Amount.** Unless otherwise specified in Paragraph 13 and subject to Paragraph 4(a), in lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Posted Collateral in the form of Cash (all of which may be retained by the Secured Party), the Secured Party will Transfer to the Pledgor at the times specified in Paragraph 13 the Interest Amount to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose). The Interest Amount or portion thereof not Transferred pursuant to this Paragraph will constitute Posted Collateral in the form of Cash and will be subject to the security interest granted under Paragraph 2.

#### **Paragraph 7. Events of Default**

For purposes of Section 5(a)(iii)(1) of this Agreement, an Event of Default will exist with respect to a party if:

- (i) that party fails (or fails to cause its Custodian) to make, when due, any Transfer of Eligible Collateral, Posted Collateral or the Interest Amount, as applicable, required to be made by it and that failure continues for two Local Business Days after notice of that failure is given to that party;
- (ii) that party fails to comply with any restriction or prohibition specified in this Annex with respect to any of the rights specified in Paragraph 6(c) and that failure continues for five Local Business Days after notice of that failure is given to that party; or
- (iii) that party fails to comply with or perform any agreement or obligation other than those specified in Paragraphs 7(i) and 7(ii) and that failure continues for 30 days after notice of that failure is given to that party.

#### **Paragraph 8. Certain Rights and Remedies**

(a) **Secured Party's Rights and Remedies.** If at any time (1) an Event of Default or Specified Condition with respect to the Pledgor has occurred and is continuing or (2) an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Pledgor, then, unless the Pledgor has paid in full all of its Obligations that are then due, the Secured Party may exercise one or more of the following rights and remedies:

- (i) all rights and remedies available to a secured party under applicable law with respect to Posted Collateral held by the Secured Party;
- (ii) any other rights and remedies available to the Secured Party under the terms of Other Posted Support, if any;
- (iii) the right to Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and
- (iv) the right to liquidate any Posted Collateral held by the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required under applicable law, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor (with the Secured Party having the right to purchase any or all of the Posted Collateral to be sold) and to apply the proceeds (or the Cash equivalent thereof) from the liquidation of the Posted Collateral to any amounts payable by the Pledgor with respect to any Obligations in that order as the Secured Party may elect.

Each party acknowledges and agrees that Posted Collateral in the form of securities may decline speedily in value and is of a type customarily sold on a recognized market, and, accordingly, the Pledgor is not entitled to prior notice of any sale of that Posted Collateral by the Secured Party, except any notice that is required under applicable law and cannot be waived.

(b) **Pledgor's Rights and Remedies.** If at any time an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then (except in the case of an Early Termination Date relating to less than all Transactions (or Swap Transactions) where the Secured Party has paid in full all of its obligations that are then due under Section 6(e) of this Agreement):

(i) the Pledgor may exercise all rights and remedies available to a Pledgor under applicable law with respect to Posted Collateral held by the Secured Party;

(ii) the Pledgor may exercise any other rights and remedies available to the Pledgor under the terms of Other Posted Support, if any;

(iii) the Secured Party will be obligated immediately to Transfer all Posted Collateral and the Interest Amount to the Pledgor; and

(iv) to the extent that Posted Collateral or the Interest Amount is not so Transferred pursuant to (iii) above, the Pledgor may:

(A) Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and

(B) to the extent that the Pledgor does not Set-off under (iv)(A) above, withhold payment of any remaining amounts payable by the Pledgor with respect to any Obligations, up to the Value of any remaining Posted Collateral held by the Secured Party, until that Posted Collateral is Transferred to the Pledgor.

(c) **Deficiencies and Excess Proceeds.** The Secured Party will Transfer to the Pledgor any proceeds and Posted Credit Support remaining after liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b) after satisfaction in full of all amounts payable by the Pledgor with respect to any Obligations; the Pledgor in all events will remain liable for any amounts remaining unpaid after any liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b).

(d) **Final Returns.** When no amounts are or thereafter may become payable by the Pledgor with respect to any Obligations (except for any potential liability under Section 2(d) of this Agreement), the Secured Party will Transfer to the Pledgor all Posted Credit Support and the Interest Amount, if any.

#### **Paragraph 9. Representations**

Each party represents to the other party (which representations will be deemed to be repeated as of each date on which it, as the Pledgor, Transfers Eligible Collateral) that:

(i) it has the power to grant a security interest in and lien on any Eligible Collateral it Transfers as the Pledgor and has taken all necessary actions to authorize the granting of that security interest and lien;

(ii) it is the sole owner of or otherwise has the right to Transfer all Eligible Collateral it Transfers to the Secured Party hereunder, free and clear of any security interest, lien, encumbrance or other restrictions other than the security interest and lien granted under Paragraph 2;

(iii) upon the Transfer of any Eligible Collateral to the Secured Party under the terms of this Annex, the Secured Party will have a valid and perfected first priority security interest therein (assuming that any central clearing corporation or any third-party financial intermediary or other entity not within the control of the Pledgor involved in the Transfer of that Eligible Collateral gives the notices and takes the action required of it under applicable law for perfection of that interest); and

(iv) the performance by it of its obligations under this Annex will not result in the creation of any security interest, lien or other encumbrance on any Posted Collateral other than the security interest and lien granted under Paragraph 2.

#### **Paragraph 10. Expenses**

- (a) **General.** Except as otherwise provided in Paragraphs 10(b) and 10(c), each party will pay its own costs and expenses in connection with performing its obligations under this Annex and neither party will be liable for any costs and expenses incurred by the other party in connection herewith.
- (b) **Posted Credit Support.** The Pledgor will promptly pay when due all taxes, assessments or charges of any nature that are imposed with respect to Posted Credit Support held by the Secured Party upon becoming aware of the same, regardless of whether any portion of that Posted Credit Support is subsequently disposed of under Paragraph 6(c), except for those taxes, assessments and charges that result from the exercise of the Secured Party's rights under Paragraph 6(c).
- (c) **Liquidation/Application of Posted Credit Support.** All reasonable costs and expenses incurred by or on behalf of the Secured Party or the Pledgor in connection with the liquidation and/or application of any Posted Credit Support under Paragraph 8 will be payable, on demand and pursuant to the Expenses Section of this Agreement, by the Defaulting Party or, if there is no Defaulting Party, equally by the parties.

#### **Paragraph 11. Miscellaneous**

- (a) **Default Interest.** A Secured Party that fails to make, when due, any Transfer of Posted Collateral or the Interest Amount will be obliged to pay the Pledgor (to the extent permitted under applicable law) an amount equal to interest at the Default Rate multiplied by the Value of the items of property that were required to be Transferred, from (and including) the date that the Posted Collateral or Interest Amount was required to be Transferred to (but excluding) the date of Transfer of that Posted Collateral or Interest Amount. This interest will be calculated on the basis of daily compounding and the actual number of days elapsed.
- (b) **Further Assurances.** Promptly following a demand made by a party, the other party will execute, deliver, file and record any financing statement, specific assignment or other document and take any other action that may be necessary or desirable and reasonably requested by that party to create, preserve, perfect or validate any security interest or lien granted under Paragraph 2, to enable that party to exercise or enforce its rights under this Annex with respect to Posted Credit Support or an Interest Amount or to effect or document a release of a security interest on Posted Collateral or an Interest Amount.
- (c) **Further Protection.** The Pledgor will promptly give notice to the Secured Party of, and defend against, any suit, action, proceeding or lien that involves Posted Credit Support Transferred by the Pledgor or that could adversely affect the security interest and lien granted by it under Paragraph 2, unless that suit, action, proceeding or lien results from the exercise of the Secured Party's rights under Paragraph 6(c).
- (d) **Good Faith and Commercially Reasonable Manner.** Performance of all obligations under this Annex, including, but not limited to, all calculations, valuations and determinations made by either party, will be made in good faith and in a commercially reasonable manner.
- (e) **Demands and Notices.** All demands and notices made by a party under this Annex will be made as specified in the Notices Section of this Agreement, except as otherwise provided in Paragraph 13.
- (f) **Specifications of Certain Matters.** Anything referred to in this Annex as being specified in Paragraph 13 also may be specified in one or more Confirmations or other documents and this Annex will be construed accordingly.

## Paragraph 12. Definitions

As used in this Annex:—

“**Cash**” means the lawful currency of the United States of America.

“**Credit Support Amount**” has the meaning specified in Paragraph 3.

“**Custodian**” has the meaning specified in Paragraphs 6(b)(i) and 13.

“**Delivery Amount**” has the meaning specified in Paragraph 3(a).

“**Disputing Party**” has the meaning specified in Paragraph 5.

“**Distributions**” means with respect to Posted Collateral other than Cash, all principal, interest and other payments and distributions of cash or other property with respect thereto, regardless of whether the Secured Party has disposed of that Posted Collateral under Paragraph 6(c). Distributions will not include any item of property acquired by the Secured Party upon any disposition or liquidation of Posted Collateral or, with respect to any Posted Collateral in the form of Cash, any distributions on that collateral, unless otherwise specified herein.

“**Eligible Collateral**” means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

“**Eligible Credit Support**” means Eligible Collateral and Other Eligible Support.

“**Exposure**” means for any Valuation Date or other date for which Exposure is calculated and subject to Paragraph 5 in the case of a dispute, the amount, if any, that would be payable to a party that is the Secured Party by the other party (expressed as a positive number) or by a party that is the Secured Party to the other party (expressed as a negative number) pursuant to Section 6(e)(ii)(2)(A) of this Agreement as if all Transactions (or Swap Transactions) were being terminated as of the relevant Valuation Time; *provided* that Market Quotation will be determined by the Valuation Agent using its estimates at mid-market of the amounts that would be paid for Replacement Transactions (as that term is defined in the definition of “Market Quotation”).

“**Independent Amount**” means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

“**Interest Amount**” means, with respect to an Interest Period, the aggregate sum of the amounts of interest calculated for each day in that Interest Period on the principal amount of Posted Collateral in the form of Cash held by the Secured Party on that day, determined by the Secured Party for each such day as follows:

- (x) the amount of Cash on that day; multiplied by
- (y) the Interest Rate in effect for that day; divided by
- (z) 360.

“**Interest Period**” means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred (or, if no Interest Amount has yet been Transferred, the Local Business Day on which Posted Collateral in the form of Cash was Transferred to or received by the Secured Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

“**Interest Rate**” means the rate specified in Paragraph 13.

“**Local Business Day**”, unless otherwise specified in Paragraph 13, has the meaning specified in the Definitions Section of this Agreement, except that references to a payment in clause (b) thereof will be deemed to include a Transfer under this Annex.

**“Minimum Transfer Amount”** means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

**“Notification Time”** has the meaning specified in Paragraph 13.

**“Obligations”** means, with respect to a party, all present and future obligations of that party under this Agreement and any additional obligations specified for that party in Paragraph 13.

**“Other Eligible Support”** means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

**“Other Posted Support”** means all Other Eligible Support Transferred to the Secured Party that remains in effect for the benefit of that Secured Party.

**“Pledgor”** means either party, when that party (i) receives a demand for or is required to Transfer Eligible Credit Support under Paragraph 3(a) or (ii) has Transferred Eligible Credit Support under Paragraph 3(a).

**“Posted Collateral”** means all Eligible Collateral, other property, Distributions, and all proceeds thereof that have been Transferred to or received by the Secured Party under this Annex and not Transferred to the Pledgor pursuant to Paragraph 3(b), 4(d)(ii) or 6(d)(i) or released by the Secured Party under Paragraph 8. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(d)(ii) will constitute Posted Collateral in the form of Cash.

**“Posted Credit Support”** means Posted Collateral and Other Posted Support.

**“Recalculation Date”** means the Valuation Date that gives rise to the dispute under Paragraph 5; *provided, however,* that if a subsequent Valuation Date occurs under Paragraph 3 prior to the resolution of the dispute, then the “Recalculation Date” means the most recent Valuation Date under Paragraph 3.

**“Resolution Time”** has the meaning specified in Paragraph 13.

**“Return Amount”** has the meaning specified in Paragraph 3(b).

**“Secured Party”** means either party, when that party (i) makes a demand for or is entitled to receive Eligible Credit Support under Paragraph 3(a) or (ii) holds or is deemed to hold Posted Credit Support.

**“Specified Condition”** means, with respect to a party, any event specified as such for that party in Paragraph 13.

**“Substitute Credit Support”** has the meaning specified in Paragraph 4(d)(i).

**“Substitution Date”** has the meaning specified in Paragraph 4(d)(ii).

**“Threshold”** means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

**“Transfer”** means, with respect to any Eligible Credit Support, Posted Credit Support or Interest Amount, and in accordance with the instructions of the Secured Party, Pledgor or Custodian, as applicable:

(i) in the case of Cash, payment or delivery by wire transfer into one or more bank accounts specified by the recipient;

(ii) in the case of certificated securities that cannot be paid or delivered by book-entry, payment or delivery in appropriate physical form to the recipient or its account accompanied by any duly executed instruments of transfer, assignments in blank, transfer tax stamps and any other documents necessary to constitute a legally valid transfer to the recipient;

(iii) in the case of securities that can be paid or delivered by book-entry, the giving of written instructions to the relevant depository institution or other entity specified by the recipient, together with a written copy thereof to the recipient, sufficient if complied with to result in a legally effective transfer of the relevant interest to the recipient; and

(iv) in the case of Other Eligible Support or Other Posted Support, as specified in Paragraph 13.

**“Valuation Agent”** has the meaning specified in Paragraph 13.

**“Valuation Date”** means each date specified in or otherwise determined pursuant to Paragraph 13.

**“Valuation Percentage”** means, for any item of Eligible Collateral, the percentage specified in Paragraph 13.

**“Valuation Time”** has the meaning specified in Paragraph 13.

**“Value”** means for any Valuation Date or other date for which Value is calculated and subject to Paragraph 5 in the case of a dispute, with respect to:

- (i) Eligible Collateral or Posted Collateral that is:
  - (A) Cash, the amount thereof; and
  - (B) a security, the bid price obtained by the Valuation Agent multiplied by the applicable Valuation Percentage, if any;
- (ii) Posted Collateral that consists of items that are not specified as Eligible Collateral, zero; and
- (iii) Other Eligible Support and Other Posted Support, as specified in Paragraph 13.